

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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UNITED STATES OF AMERICA,	)	NO. CR12-001 RSL
	)	
Plaintiff,	)	
	)	
vs.	)	October 2, 2014
	)	Seattle, Washington
TIMOTHY DORAN,	)	1:30 p.m.
	)	
Defendant.	)	

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TRANSCRIPT OF FELONY SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE ROBERT S. LASNIK  
UNITED STATES DISTRICT COURT JUDGE

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For the Plaintiff:	MR. BRIAN WERNER -and- MR. ANDREW FRIEDMAN Assistant United States Attorney 700 Stewart Street, #5220 Seattle, Washington 98101
For the Defendant:	MR. DENNIS CARROLL Federal Public Defender 1601-5th Avenue, Ste 700 Seattle, Washington 98101
U.S. Probation Office:	MR. MICHAEL MARKHAM U.S. Probation Officer
Court Reporter:	Leslie A. Waltzer, CSR 3641 North Pearl Street Tacoma, WA 98407

(Proceedings recorded by mechanical stenography;  
transcript produced with aid of computer.)

1 (Defendant Present, in Custody)

2 THE CLERK: All rise. Court is again in  
3 session, the Honorable Robert S. Lasnik presiding.

4 THE COURT: Good afternoon. Thank you. Please  
5 be seated.

6 THE CLERK: Case CR12-001 RSL, *United States v.*  
7 *Timothy Doran*. Counsel, would you please make your  
8 appearances.

9 MR. WERNER: Good afternoon, Your Honor. Brian  
10 Werner and Andrew Friedman on behalf of the United  
11 States. With us at counsel table is Inspector Lisa  
12 Stephenson from the United States Marshals Service.

13 THE COURT: Hi, Mr. Werner, Mr. Friedman and  
14 Ms. Stephenson.

15 MR. CARROLL: Good afternoon, Your Honor.  
16 Dennis Carroll on behalf of Mr. Doran.

17 THE COURT: Hi, Mr. Carroll and Mr. Doran.

18 And we have Michael Markham from U.S. Probation.

19 We're here for sentencing on Mr. Doran's plea of  
20 guilty to one count of Failing to Register as a Sex  
21 Offender. The Court has conducted a lengthy evidentiary  
22 hearing that related to the allegation that Mr. Doran had  
23 committed an illegal homicide in Vietnam involving a  
24 woman who he dated there and who cared for his children.  
25 I've issued an order regarding the sentencing hearing

1 that went out at the end of August, which found that the  
2 Court was satisfied by clear and convincing evidence that  
3 Mr. Doran did kill Ms. Ngoc in Vietnam, and that the  
4 Court would consider the parties' arguments regarding the  
5 appropriate weight to give to this finding in the context  
6 of all the factors identified in 3553, mitigating and  
7 aggravating circumstances and within the Guideline range  
8 for this crime, and I have since received additional  
9 briefing from both the government and from the defense  
10 and then a Supplemental Sentencing Memorandum from the  
11 defense.

12 I'm not going to list every document that I looked  
13 at, because there are so many that are in the court file,  
14 but all the material going back to the first scheduled  
15 sentencing and right through to today I have reviewed in  
16 preparation for the sentencing, including, of course,  
17 Mr. Facklam's original U.S. Probation Presentence Report  
18 and the various letters that Mr. Doran has submitted to  
19 me through the years and the pictures of the children  
20 which were submitted to me previously too, which I'm  
21 happy to return to Mr. Doran.

22 I know that there are issues that we have to deal  
23 with also later in regard to return of property,  
24 designation of a facility, timing of the commitment, et  
25 cetera, but we'll deal with those right after the

1 sentencing.

2 In terms of the materials that were submitted since  
3 the order that the Court entered at the end of August,  
4 Mr. Carroll, do I have everything you wanted me to have  
5 in preparation for the sentencing?

6 MR. CARROLL: Yes, Your Honor.

7 THE COURT: And have you had an opportunity to  
8 go over the government's reports since then with  
9 Mr. Doran and make any additions or corrections?

10 MR. CARROLL: Yes, Your Honor.

11 THE COURT: All right. Mr. Doran, are you ready  
12 to proceed to sentencing today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Mr. Werner?

15 MR. WERNER: Thank you, Your Honor.

16 And appreciating that Your Honor has, as you said,  
17 received substantial briefing, substantial evidence and  
18 issued a substantial ten-page order on this case, I know  
19 that Your Honor is very familiar with the facts of this  
20 case and the law that has been referenced in this case,  
21 but I still would like to discuss three things today,  
22 Your Honor.

23 First, I want to discuss the -- the Guideline, the  
24 fact that you can -- this Court can sentence Mr. Doran --  
25 the law provides for this Court sentencing Mr. Doran

1 above the Guideline in this case. Second, the Court  
2 should sentence Mr. Doran above the Guideline in this  
3 case and, third, I'm going to advise the Court of the  
4 government's position related to supervised release  
5 conditions that were objected to in the defense's  
6 Sentencing Memorandum.

7 THE COURT: Great.

8 MR. WERNER: Your Honor, this Court can impose a  
9 ten-year sentence in this case. The Ninth Circuit law,  
10 while it is straight forward I think on this point, there  
11 are two things that a sentencing court's discretion is  
12 reined in by. First, there must be no procedural error;  
13 that is, the Court must correctly calculate the  
14 Guideline. The Court must not rely on any clearly  
15 erroneous facts. There must be no procedural error. And  
16 the second thing is the Court's sentence must be  
17 substantively reasonable. And, again, as the Court -- as  
18 the government stated in their Sentencing Memo,  
19 substantive reasonableness is not a point, but is a --  
20 but is a range.

21 There are many cases cited by the government to Your  
22 Honor that say the Court may vary above the Guideline  
23 range, and there are many cases cited by the Court and  
24 many cases in my experience and probably the Court's  
25 experience where the Court has varied -- this Court and

1 other courts in this district have varied below the  
2 Guideline range. Reasonableness is a range, not a point.

3 Many -- one of those cases the defense wants to cite  
4 to this Court -- has cited -- is the *Allen* case. And,  
5 again, I don't want to belabor it, because I think the  
6 Court addressed it in its ruling, saying that, you know,  
7 the *Allen* case -- the Court does respect the *Allen* case  
8 or is going to follow the *Allen* case in the extent that  
9 you realize -- the Court realizes it's somewhat  
10 constrained in how much weight it can give to the murder  
11 that was committed by Mr. Doran in this case.

12 But I do want to point out that the *Allen* case is  
13 very factually different than the case we have before us  
14 today. The *Allen* case involved a 360-month sentence that  
15 was imposed on the defendant in that case for conduct  
16 that was not proved by -- not an actual murder, but  
17 conduct describing the desire to murder. And, finally,  
18 the sentencing in that case was different from this case  
19 in another way. That court actually adopted the  
20 Guideline range as if it was deciding a criminal sexual  
21 abuse.

22 None of those three things are at play here. This is  
23 not a 360-month sentence the government is asking for.  
24 It's conduct that actually occurred. A woman is dead.  
25 And, finally, the Guideline -- the government is not

1 asking that the Court use the Guideline range that would  
2 be in play for murder in this case.

3 Again, there are cases above the Guideline, there are  
4 cases below the Guideline, including the case of *Fitch*,  
5 which is the Ninth Circuit case that the Court has also  
6 referred to in its rulings in this case. That's a case  
7 where a 262-month sentence, a 22-year sentence, was  
8 imposed for bank device -- for bank fraud and access  
9 device fraud. Again, the law I think is clear that the  
10 Court can vary from the Guideline range and should tie  
11 that variance to 33 -- to 3553(a) factors.

12 I want to talk next about those factors and why the  
13 Court should vary from the Guideline range in this case.  
14 The history and characteristics of Mr. Doran, the need to  
15 deter Mr. Doran from future conduct, future criminal  
16 acts, and the need to protect the public from Mr. Doran  
17 are the three factors in Guideline -- in 3553(a) that the  
18 government has pointed to that counsel for a sentence of  
19 ten years here. I think there's three specific things  
20 that the Court can cite for -- three things that came up  
21 during the proceedings in this case that the Court can  
22 cite.

23 The first is the murder of Bich Ngoc Nguyen in Trang,  
24 Vietnam in March 2011 by the Defendant. This was a woman  
25 that the Defendant was dating. This was a woman that the

1 Defendant choked with his hands, murdered. This is a  
2 woman that the Defendant rolled up in a rug, hid in his  
3 house, and then fled the country. This is a woman  
4 that -- who was -- the Defendant had been in a  
5 relationship with, and the Defendant, rather than  
6 providing any sort of self-defense justification for  
7 this, immediately began telling stories to justify to  
8 others and probably to himself, Your Honor, why he had  
9 committed this horrendous act.

10 A man who could commit a murder like this with his  
11 bare hands, hide the woman in a -- throw a woman in a rug  
12 in a closet and then leave the country, this is a man who  
13 deserves to be in prison for ten years. A man who could  
14 make such calculated decisions to quickly leave the  
15 country, to try to talk to others, to try to set up a  
16 possible self-defense justification, this is a dangerous  
17 man, a man who should be sentenced to ten years.

18 But it's not just the fact that this is one murder,  
19 this is one act -- this is one act of anger that's  
20 separate, that is different from Mr. Doran's character,  
21 the characteristics that have been shown to this Court.  
22 His criminal history has two other similar incidents in  
23 its past. In 1990, Your Honor, the Defendant assaulted  
24 his then wife. He hit her, he kicked her, he bit her.  
25 In 1992 he assaulted by raping his ex-girlfriend. He



1 twisted her legs. He raped her. He began to -- he  
2 inserted foreign objects in her, and he turned on the gas  
3 and left her to die. Then the third incident, again, was  
4 the choking and murdering death of his ex-girlfriend in  
5 Vietnam. Three horrible instances of domestic violence.  
6 Three escalating incidents of domestic violence.

7 This is a violent man who seeks the control of people  
8 he's in relationships with and acted out on those -- his  
9 inability to control his own impulses at least those  
10 three times. A sentence of ten years is appropriate for  
11 someone with this criminal history, this type of criminal  
12 history.

13 The third thing I'd like to point to, Your Honor, is  
14 the statute itself that's at issue in this case. 2250(c)  
15 talks about the five years -- in addition to any sentence  
16 that should -- that's imposed on 2250(a), which is a  
17 failure to register, 2250(c) talks about imposing at  
18 least an additional five years on someone who commits a  
19 crime of violence while unregistered. That's what  
20 Mr. Doran did. Now, it doesn't technically apply here,  
21 because Mr. Doran wasn't in the United States when he  
22 killed Ms. Nguyen. But that's, I think, a strong  
23 indication of the fact that the sentence of ten years --  
24 five years -- at least five years for the murder and five  
25 years or something less than that on the underlying

1 failure to register, for a total of ten years, is a  
2 substantially reasonable sentence.

3 Finally, Your Honor, I want to talk about the  
4 supervised release conditions that were proposed by the  
5 Probation Office and objected to by the defense. Your  
6 Honor, the government does not -- does not think that --  
7 it would be -- accepts the Court not imposing a financial  
8 condition in this case; that is, access to Mr. Doran's  
9 financial records. That's not what this case is about.  
10 Although it is a good way to keep track of people by  
11 keeping -- having access to financial records, the  
12 government does not -- would not resist the Court  
13 striking that condition.

14 The government does believe that MRT, Moral  
15 Reconation Therapy, is justified here. The government  
16 does believe that drug and alcohol testing is advisable  
17 here, especially given Mr. Doran's past history with  
18 steroid abuse. I think that's something that the  
19 Probation Office -- a tool that the Probation Office  
20 should have in their kit, and the government does believe  
21 that mental health treatment should be provided -- should  
22 be ordered as a condition for Mr. Doran.

23 I think the -- it was the defense Sentencing Memo  
24 that mentioned that the FTC has diagnosed him -- or he  
25 gave an indicated of having PTSD. I think that alone is

1 justification for ordering a mental health evaluation as  
2 one of the conditions of supervised release for  
3 Mr. Doran.

4 As for the sex offender conditions, the government  
5 actually doesn't -- agrees with the defense. A lot of  
6 those conditions do not apply here. In fact, all of  
7 them, with the exception of one that's the condition --  
8 proposed condition number nine, which orders a sexual  
9 deviancy evaluation. The government, after consulting  
10 with Mr. Markham, does think that that is an appropriate  
11 condition to keep in this case. The government would be  
12 okay with excising the two parts that the defense finds  
13 objectionable; that is, physiological testing, I don't  
14 think, is needed -- necessary to be ordered by the Court  
15 and the -- the idea of turning over past evaluations to  
16 the Court. The government is -- also would not object to  
17 the Court excising that part of the condition as well.

18 But, again, the government does believe that allowing  
19 the Probation Office to order a sexual deviancy  
20 evaluation is something that the Probation Office should  
21 be allowed to do here. While failure to register isn't a  
22 sex offense, Mr. Doran is a sex offender. He committed a  
23 sex offense, and this standing alone I think is  
24 justification for a sexual deviancy evaluation under the  
25 limited way I've described it.

1           Again, for the rest of the conditions, the rest of  
2           the sex offender conditions, Your Honor, the government  
3           does not support -- is okay with those being excised from  
4           the Judgment in this case. That's because, Your Honor,  
5           Mr. Doran's crime are not about sex. They're about  
6           control. Mr. Doran is a serial abuser of women. He is  
7           someone who is violent. He is someone who has sought to  
8           control the women in his life by violence, and he is  
9           someone who is dangerous, who is a threat to the public.  
10          The Court should sentence him to the maximum sentence  
11          available, that is, ten years.

12                   THE COURT: Okay. Thanks, Mr. Werner.

13           Mr. Carroll?

14                   MR. CARROLL: Thank you, Your Honor.

15           As the Tenth Circuit said in *Allen*, this is not an  
16           easy case. It's not an easy case under *Booker*, nor do I  
17           think it's as easy a case as the government would portray  
18           it to be. They indicated, well, it's straight forward  
19           under *Booker*, but I don't think, looking at the *Allen*  
20           case, that it's so straight forward.

21           Under *Allen* the Court does not have free rein under  
22           3553 to make an extraordinary variance based on unrelated  
23           and uncharged conduct. It's tempting. I understand it's  
24           tempting to use the homicide as a means to punish  
25           Mr. Doran further for that -- for the murder,

1 particularly in a case like this where there's, at least  
2 right now, no extradition treaty. And there may be one  
3 in the future, but there doesn't seem to be one that's  
4 going to happen anytime soon. But the Court can't do  
5 that.

6 And the government couches their language in the  
7 3553(a) factors, but the reality is that they're asking  
8 for punishment. As Mr. Werner said when he's describing  
9 the murder, this is someone who committed a murder,  
10 deserves to be in prison for that murder, and that's  
11 explicitly trying to punish Mr. Doran for that, although  
12 they do couch it in the 3553 factors.

13 And to be clear, I'm going to say this for the  
14 record, but I'm also saying it for Mr. Doran. Mr. Doran  
15 objects to the Court's finding that he committed this  
16 homicide. He is adamant that he is innocent of this  
17 homicide, and that he did not do this homicide, and that  
18 he should not be punished for it, and it should not be a  
19 factor in any way, shape or form here before this Court.

20 As his lawyer I'm cognizant of the Court's order and  
21 the subsequent order that that factual issue is closed at  
22 this point in time. And under *Allen* and Ninth Circuit  
23 case law, *Fitch*, we have the relatedness principle where  
24 the Court has to first begin with the Guidelines.  
25 They're the benchmark, the anchor, with which this Court

1 must begin its sentencing analysis. There's no dispute  
2 here. Everyone agrees the range is 18 to 24 months.  
3 And, yes, under *Booker*, this Court has the authority to  
4 vary from the Guidelines, but it's not unfettered.

5 And it's kind of ironic that the government now can  
6 use *Booker*, which is a case that protects defendant's --  
7 their Sixth Amendment rights and their Fifth Amendment  
8 rights to have juries determine particular facts that are  
9 used to -- in the sentencing process to enhance their  
10 sentence, and that *Booker* decision is now being flipped  
11 in this case to use uncharged, unrelated conduct that a  
12 jury has not been asked to decide as a significant or  
13 primary reason to enhance Mr. Doran's sentence.

14 And I think *Allen* is clear. *Booker* does not sanction  
15 an end run around the Fifth and Sixth Amendments. It  
16 puts a limit on the Court's ability. Particularly in a  
17 case where it's unrelated offense conduct, unrelated to  
18 the underlying conviction, I should say, the Court cannot  
19 simply just have free rein. Now, in *Allen* there's no  
20 mechanical or mathematical formula that the court gives  
21 us, but the court was clear that dramatic variances based  
22 on unrelated, unadjudicated conduct can violate the Fifth  
23 and Sixth Amendment.

24 Now, what *Allen* does do, although they reluctantly  
25 approve of it, is the horizontal departure that I

1 suggested in my -- my Memorandum. Now, they say it might  
2 be reasonable for the district court to consider Allen's  
3 uncharged conduct as a factor bearing on offender  
4 characteristics under Chapter 4. Although a stretch, it  
5 would be at least faithful to the Guidelines. And here  
6 the government and the Probation Department's  
7 recommendations are completely untethered from the  
8 Guidelines. There's no hook into the Guidelines. They  
9 agree that it's 18 to 24, but say forget about it.

10 Now, what I've suggested is if the Court is inclined  
11 to a horizontal departure -- now, to be clear, Mr. Doran  
12 is not conceding that a horizontal departure to a higher  
13 criminal history category is warranted. When Mr. Doran  
14 was released from prison in 1998, all the way up to 2011,  
15 there's no indication that he was engaged in criminal  
16 conduct. No contact with police. No arrest. Now, the  
17 government has attached to its Memo a restraining order  
18 that his ex-wife got during the course of a divorce and  
19 custody dispute. Now, I attached the ultimate custody  
20 order where Mr. Doran, after all that was aired before a  
21 superior court judge, got custody of his kids, so I would  
22 suggest the allegations of -- the government's argument  
23 that he's been abusing women for all that time is simply  
24 unwarranted in light of that evidence.

25 I've also provided the Court with a polygraph

1 examination that was done, I believe, in 2009 that  
2 indicated that Mr. Doran had not been engaging in any  
3 criminal acts since his release from prison. Also, there  
4 are numerous letters indicating that Mr. Doran is a good  
5 father. He's someone who cares about his children and,  
6 frankly, I haven't had -- I don't think I've had a single  
7 meeting or conversation with Mr. Doran where he's not  
8 brought up his children, his concern for his children,  
9 and the impact that all of this is having on his  
10 children.

11 But getting back to *Allen* and the horizontal  
12 departure. Assuming the Court wanted to factor in that  
13 Assault 2 in 1990 that doesn't score his criminal  
14 history, and even the homicide, which would at most add  
15 another three levels, his range is, like, 27 to 33  
16 months, and we would make a recommendation at the high  
17 end of that range. And *Allen* approved of this method.  
18 It's -- at least it's tied to the Guidelines. It has  
19 some grounding. It's anchored in the Guidelines.

20 Now, the government cites a number of cases where  
21 courts did vary from the Guidelines. I would point out a  
22 few things about those cases. Most of those cases were  
23 variances that were not proportionally as extreme as the  
24 one we have here. I think there was one that was  
25 similar. It was someone with a range of 135 months, and



1 the court imposed probation. In that case the reason for  
2 the downward variance was because of the offense-related  
3 conduct. That person during the course of the offense  
4 was a passive participant in the offense. And I think  
5 the thread going through all of those, in addition to the  
6 magnitude was not so great as what the government is  
7 asking for, is that the variances were either based on  
8 the actual offense conduct that took the case out of the  
9 heartland, or the criminal history which was actually  
10 adjudicated, and here what the government is relying on  
11 and Probation, is an unadjudicated, unrelated offense  
12 that is completely different from this particular case.

13 The government cites the *Fitch* case. I think the  
14 *Fitch* case is a good contrast, because in that case the  
15 defendant killed the person in order to effectuate the  
16 fraud. It was explicitly found to be specifically  
17 related to that particular offense conduct, so the  
18 variance was approved. I would note that that variance  
19 was only two-and-a-half times what the Guidelines range  
20 was here. The government's variance is five times what  
21 the Guidelines range is here. The government --

22 THE COURT: Mr. Carroll, could I ask you a  
23 question on the relatedness issue? If the Defendant had  
24 gone to another state and not registered as a sex  
25 offender and then started a relationship with a woman,

1 and there was a violent crime that came out of that,  
2 wouldn't that be considered related to the failure to  
3 register as a sex offender? Because the statute actually  
4 has a specific punishment for if you commit a violent  
5 crime in conjunction with your failure to register.

6 I mean, it may be a fiction to think that women are  
7 actually checking the registry, but that is part of the  
8 reason why we have a registry, is that so people can  
9 check it and see if there's a dangerous person either in  
10 the community or someone they're about to date.

11 MR. CARROLL: Well, I would say that  
12 initially -- well, 2250, I think, is distinguishable in  
13 that situation, because Mr. Doran would actually have the  
14 right to have the jury decide the crime of violence.

15 THE COURT: Sure. But if they did, wouldn't it  
16 be a related crime?

17 MR. CARROLL: I -- I wouldn't suggest that -- I  
18 don't think it would necessarily be a related crime. It  
19 wouldn't be very related to the fact of not registering.  
20 This Court has found that Mr. Doran's homicide was not  
21 related to the failure to register offense.

22 I don't know if the fact that it was in Vietnam also  
23 is another distinguishing factor in that you would have  
24 no duty to register there as a sex offender either. But  
25 if you look at the cases in *Fitch* and -- and the other

1 cases cited by the government, the thread is that, A, the  
2 variances weren't that much and, secondly, the variances  
3 were based on the actual offense conduct or something  
4 that was adjudicated in their criminal history.

5 Regarding the supervised release conditions, I was  
6 prepared to go on, and now in light of the government's  
7 concession, I'll try to cut my comments short.

8 THE COURT: Let me just ask Mr. Werner one thing  
9 I didn't press him on. Do you agree that it's five years  
10 and not lifetime on the term of supervised release?

11 MR. WERNER: Yes. I believe the Guideline term  
12 is -- I think the maximum term the Court can impose is  
13 life.

14 THE COURT: You still think there is that  
15 possibility?

16 MR. WERNER: Yes, Your Honor. But as we said in  
17 our Memo, I think the Court would need to justify why the  
18 Court would want more than five years at this time, so  
19 there's --

20 THE COURT: Okay. I just want to make sure on  
21 that.

22 So you can certainly argue that one, Mr. Carroll.

23 MR. CARROLL: Thank you, Your Honor.

24 The government bears the burden of showing that it's  
25 necessary and also the conditions must involve no greater

1 deprivation than necessary. I think there's a tendency  
2 to view supervised release conditions as something that's  
3 helpful for the defendant and -- forgetting that these  
4 are -- particularly sex offender conditions and  
5 evaluation conditions, they're onerous. They are things  
6 that are part of the punishment, and harsh conditions can  
7 actually negatively impact a person's reentry into  
8 society.

9 Regarding the length of the supervised release,  
10 Mr. Doran would ask the Court to impose just five years.  
11 That's what the Guidelines says. A lifetime period of  
12 supervision is an extraordinary departure from that  
13 Guidelines recommendation. Courts who have looked at sex  
14 offender conditions have noted one of the factors to  
15 consider is the remoteness of the prior sex offense, and  
16 here we have a situation where Mr. Doran's last sex  
17 offense was in 1992.

18 Regarding the specific treatment condition that the  
19 government recommends -- again, the government agrees  
20 that this case isn't really about sex offending. It's  
21 more about power and control. Mr. Doran, of course,  
22 would object to that, and we don't concede that, but  
23 there has to be a showing that a sex offender evaluation  
24 is particularly needed in this case.

25 Mr. Doran did see a therapist when he was both in

1 prison and out of prison, Sally Wing, who's a certified  
2 sex offender treatment provider, so he has had some  
3 counseling, he's had some therapy in the past to address  
4 primarily anger issues, and an evaluation simply would  
5 not be warranted in this case.

6 THE COURT: Mr. Carroll, I noticed only in  
7 preparation for the sentencing in the last couple of days  
8 that on the Judgment and Sentence out of Pierce County  
9 for the rape, there's a reference to conditions to be  
10 imposed consistent with the report of Dr. Harris. And I  
11 assume that's Dr. G. Christian Harris who did psycho and  
12 sexual evaluations back in the -- in that timeframe. Are  
13 you aware of anything about that report?

14 MR. CARROLL: No, I'm not aware. I don't have  
15 that -- that report.

16 THE COURT: Okay. You don't have it either, of  
17 course, or I would have seen it, Mr. Werner?

18 MR. WERNER: No, we don't.

19 MR. CARROLL: And I would point out that he  
20 finished his supervision for that offense. He complied  
21 with all of the conditions, and they closed his community  
22 supervision on the case as part of that 13-year period  
23 when he was doing well in the community.

24 So in closing, Your Honor, the Court's required to  
25 impose the minimum term necessary to achieve the goals of

1 sentencing. Ten years is more than is necessary. It is  
2 also too extraordinary of a variance based on unrelated  
3 and uncharged conduct, so we would ask for the Court to  
4 impose 33 months. And we would also object to the -- the  
5 evaluation conditions, the mental health conditions, the  
6 length of community -- of supervised release recommended  
7 by the Probation Department, and the MRT condition.

8 THE COURT: Okay. Thanks very much,  
9 Mr. Carroll.

10 And I know that some of your research attorneys are  
11 probably the ones who unearthed some of those relatedness  
12 cases also, so well done for the public defender's  
13 research lawyers.

14 Mr. Doran, is there anything you want to say today  
15 before I impose the sentence?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. Would you go to the podium.

18 THE DEFENDANT: I know that today you're going  
19 to sentence me, and I hope it's for the crime that I  
20 committed by going out of state to provide for my kids to  
21 work. As far as the Vietnam issue, I really think  
22 there's a whole lot of evidence, physical evidence  
23 especially, that didn't get as much weight given to it as  
24 it should have. There's more to this story than -- than  
25 what was brought out to you.

1           This woman never watched my children. Sure, I dated  
2 her. I was in a relationship with her. But she wanted  
3 me to bring her to America, and I had no plans to do  
4 that. I think it's imperative to know that at the same  
5 time that she was going out with me, she was also engaged  
6 with -- with a man from Australia.

7           I'm really hoping this Court does not misconstrue  
8 what I'm saying. I'm not trying to discredit her all.  
9 What I'm trying to do is explain.

10           This woman was intent on getting out of Vietnam by  
11 any means necessary. I met her by helping her when she  
12 got hit by a taxi, and started a relationship after that.  
13 But the things that took place, the way that she was when  
14 she was around my children, I -- I couldn't have that,  
15 and the fact that she -- she was intent on pushing the  
16 issue for me to bring her to America, and then when I  
17 ended up breaking up with her, she sent the gangsters  
18 after me and followed us and had my children threatened.  
19 And there's evidence that -- that wasn't provided to you  
20 that clearly states that people were aware of this. And  
21 the investigation that went on in Vietnam, it -- I don't  
22 know -- I don't know how to explain it to you so you  
23 understand, but it works completely differently over  
24 there, and to say, "cover up," is an understatement.

25           I think that -- that if this would have been

1 investigated when I first came in -- I know that due to  
2 the budget restraints and everything, it took three years  
3 to be able to get financing to send Mr. Stansell over  
4 there. But given the fact of what happened to him when  
5 he got there as far as being able to do the  
6 investigation, I think that -- that has a lot to do with  
7 this. Plus the physical evidence that -- that -- I  
8 never -- have never and will never deny that they came  
9 into the house, and they attacked me and my children, and  
10 I protected my children.

11 Did I kill her? Absolutely not. Did I wrap her in a  
12 blanket like they said, and wrap her head in a bag and  
13 stuff her in a closet? Absolutely not. And there's not  
14 one piece of physical evidence that the government or  
15 anybody else has provided to me to be able to prove that  
16 unequivocally I'm responsible for it instead of the other  
17 people that I have stated from the very beginning that  
18 are involved with this.

19 There was a credit card found at the scene. There  
20 was an unidentified handprint on the storage door to  
21 where her body was found. And I'm sorry that she died,  
22 but I am not the one that put her in the physical  
23 condition that they found her.

24 They're -- from the very beginning I tried to aid the  
25 investigation by sending my business partner information



1 to the police to -- with names and phone numbers of two  
2 women who -- who were local that saw Ms. Ngoc bring the  
3 gangsters after me. And she went and talked with them  
4 and was asking where I was. When I was at the consulate,  
5 they called me and told me that it was not safe for my  
6 children and myself to return there. Her boss even says  
7 that -- that she was aware of the fiancé in Australia,  
8 and asked her why she wasn't just going to stay with him,  
9 and she said that she wanted to come to America instead  
10 of Australia; that there was no -- there was no guarantee  
11 that Australia was going to -- going to happen.

12 My point is this: Yeah, I protected my kids. I  
13 didn't kill anybody, though, and there's no physical  
14 evidence that's been shown. The only blood that was  
15 found at the scene was from my son when she was beating  
16 my son, Your Honor. I don't know what I can say.  
17 They -- they would not let me bring forth the evidence  
18 that I wanted to bring forth that I think this Court  
19 should have been aware of to be able to make your  
20 decision.

21 And I understand that you found me guilty based on  
22 the limited amount of evidence that you were provided.  
23 Most of it was hearsay. I think that, for one, if  
24 Mr. Williams' statements would have been dug into a  
25 little deeper, he had an argument or conflicting

1 agreement with the U.S. Marshal about whose mother was  
2 living at my house. Mr. Williams doesn't have any of the  
3 scenarios correct. He doesn't have any of the evidence  
4 correct as to what took place, and it's just -- I know  
5 that by my record from 1990 and 1992, I look terrible.  
6 You know what? I made some terrible mistakes. I was  
7 young. And I'm not using this for an excuse. Please,  
8 don't take it that way. I was on steroids. I was a  
9 young narcissistic young man, but that was half of my  
10 life ago. I got out in 1998, and I have not committed a  
11 crime until I went out of state and -- to work to provide  
12 for my children.

13 The issues that they wanted to bring up about the  
14 incident with my ex-wife, my son's mom, that was a  
15 reciprocal restraining order that the county did, because  
16 she was at a shelter all -- trying to ensure that she was  
17 not going to get deported, and I was given full custody  
18 of my children. I've never been violent with anybody  
19 since 1992.

20 The thing that's important about that incident is  
21 that the Court needs to understand and -- that Brenda  
22 Giacco, my ex-girlfriend, my victim from 1992, I lived a  
23 block and a half away from her, when I first got out, for  
24 a year and a half. We lived in Maple Valley for seven  
25 years in -- in the same small town. She wrote a letter

1 to be able to submit to the -- to the embassy to get my  
2 children's mother -- her visa approved, stating that she  
3 understands that sometimes people make bad mistakes, and  
4 explained that she didn't fear me or that I posed a  
5 threat to anybody else.

6 I filed multiple restraining orders against women in  
7 Washington state when there was a problem with a  
8 relationship ending that -- that I wanted to make sure  
9 that it wasn't going to be exacerbated. I've not been  
10 violent with anybody. I know that they want so badly,  
11 because of mistakes that I made before, for me to be  
12 guilty for this, but I already paid for my 1990 and 1992  
13 crimes, and I proved for 13 years -- with a few traffic  
14 tickets. I got out on a Wednesday and went to work the  
15 following Monday and worked the whole time, even in a bad  
16 economy.

17 And all I did was I brought a woman here, and our  
18 marriage did not work out, but there was no violence.  
19 There was no domestic abuse. There was nothing like  
20 that. She wanted to stay in America, and we got  
21 divorced. I got sole custody of my children. My  
22 children are everything to me. They -- I can't explain  
23 to you how much my children mean to me.

24 And this incident that took place in Vietnam, you  
25 need to understand that you don't know everything that

1 took place and you -- all I did was protect my children.  
2 I did not -- she was not in the condition that they found  
3 her in when I left my house. And without spreading a  
4 whole bunch of facts that I've been advised not to go  
5 into at this time, I don't know how to get you to  
6 understand that there's clearly a third party involved in  
7 this.

8 And I'm not trying to shift the blame. I'm really  
9 hoping that you're -- I'm taking responsibility by  
10 admitting that they came into the house, and they  
11 attacked us, and I -- and I protected my children. That  
12 was only after taking every single step to avoid this.  
13 And -- and it was not anything on my part. It was the  
14 victim that was the one that was doing all the harassing,  
15 that was sending the gangsters, that -- that stole my  
16 money, that -- that had personal papers of mine, that --  
17 there's no good reason at all for this person to have had  
18 this, nor did I ever know that this person had this. And  
19 because she would not take no for an answer, that this  
20 is -- this was what she ultimately did. She wanted to  
21 get out of Vietnam.

22 All I'm trying to do is explain that things work  
23 completely different over there, and -- we don't have  
24 gangsters here in America where I can have a problem with  
25 somebody and say, "I'll give you \$10 to go and do this to

1 this person," but it's clear that -- every Vietnamese  
2 person that grew up there knows that that's the way that  
3 it works, and it's --

4 I don't know what else to say without getting into  
5 too many facts that I've been advised not to go into at  
6 this time, but, you know -- I mean, I'm not -- I'm not  
7 trying to shift the blame. I'm taking responsibility for  
8 what I did. But I did not kill anyone and wrap them in a  
9 blanket and stuff them in a storage unit, and -- and  
10 there's not one piece of physical evidence that the  
11 government has provided that hasn't proved that it's not  
12 somebody else, just like I said it was.

13 And, again, I did everything I could to be able to  
14 get investigation into the two women that knew this, and  
15 the Vietnamese officer testified that he did not  
16 investigate them, but yet I have evidence to the  
17 contrary, that he was taken to that woman's house.

18 THE COURT: Okay. Thanks, Mr. Doran.

19 The matter is scored correctly by U.S. Probation as  
20 an offense level 14, criminal history category two, which  
21 yields a Guideline range of 18 to 24 months.

22 I came to the -- independent of Mr. Carroll, came to  
23 a similar conclusion that one way to approach this is to  
24 look at whether the criminal history is understated. I  
25 believe it is understated. You have the non-countable

1       forgery conviction from the 1980's. You have the  
2       non-counted Assault in the Second Degree conviction and,  
3       of course, we have this homicide conviction, which is not  
4       fully adjudicated and countable. So I do believe that a  
5       departure to a criminal history category four is a good  
6       starting point, which takes us to 27 to 33 months.

7               Then, I don't think the Court can use the homicide as  
8       a departure, but the Court can use it for a variance  
9       sentence. And the difference between a departure and a  
10      variance is set forth in the *Allen* case and in other  
11      cases, but in terms of doing what is the appropriate  
12      punishment, I look at the 3553 factors which, of course,  
13      include the issue of the history and characteristics of  
14      the Defendant, and the need to protect the public from  
15      further crimes of this Defendant, and I do find that  
16      Timothy Doran presents a clear and present danger to any  
17      woman who he establishes a romantic relationship with.

18             On multiple occasions he's demonstrated remarkable  
19      levels of violence and depravity aimed at women he claims  
20      to love or cherish: This felony assault on his first  
21      wife, his violent and sadistic rape of his girlfriend,  
22      and finally the vicious strangulation of his girlfriend  
23      in Vietnam, followed by stuffing the body where he knew  
24      it would not be found for a significant time.

25             All these events establish two things: One, that his

1 criminal history category of two significantly  
2 undercounts his prior criminal history and should be  
3 readjusted to a category four and, secondly, on the 3553  
4 factors, Mr. Doran presents a strong case for why a  
5 longer sentence is needed to protect the public from  
6 further crimes of the Defendant.

7       These offenses above and that we talked about here  
8 show that the history and characteristics of Mr. Doran  
9 demand a longer sentence than the Guideline range or even  
10 the adjusted Guideline range. Therefore, the Court goes  
11 to the top of the adjusted range, 33 months, and triples  
12 that sentence, for a total sentence of 99 months'  
13 imprisonment. This variance upward from 33 months has to  
14 be looked at on a percentage basis, and it is 300  
15 percent, and in a length-of-increase basis, and here that  
16 is 66 months which, of course, is double the 33 months.

17       These increases are within reason given the case law  
18 cited to me about how the Court can use an uncharged,  
19 out-of-country homicide in conjunction with all the other  
20 factors to craft a sentence that does not run afoul of  
21 the legal restrictions of related to the offense of  
22 conviction in these cited cases. So, ultimately, the  
23 Court determines that this 99-month term of imprisonment  
24 is the reasonable sentence considering all aggravating  
25 and mitigating circumstances, but is the absolute minimum

1 necessary to provide punishment which is sufficient but  
2 not greater than necessary.

3 So, Mr. Doran, you are sentenced to a 99-month term  
4 of imprisonment. I will impose five years of supervised  
5 release. I believe that is the appropriate period of  
6 time. And you will be subject to standard conditions as  
7 well as the following special conditions: You will  
8 cooperate in the collection of DNA. You must not possess  
9 any firearm or destructive device. You will submit to  
10 drug or alcohol testing, and you will participate as  
11 instructed by U.S. Probation in any program approved by  
12 Probation for treatment of narcotic addiction, drug  
13 dependency or substance abuse, which will include  
14 testing. You must abstain from the use of alcohol and  
15 all other intoxicants during supervision. Your history  
16 of abusing steroids is consistent with the need for  
17 this -- these two testing and treatment conditions.

18 You will submit to search of your person, residence,  
19 office, safe deposit box, storage unit, property or  
20 vehicle, conducted in a reasonable time and manner by law  
21 enforcement or Probation. You will participate, as  
22 directed, in the Moral Reconation Therapy program. You  
23 will also participate in any mental health treatment or  
24 counseling program approved by Probation and contribute  
25 to the cost of any programs to the extent that you're



1 financially able to do so.

2 I am not going to impose any specific sex offender  
3 treatment requirements that would follow the conviction  
4 of a sex offense, because this is not sex offense, and  
5 this -- you are not the kind of person who is dangerous  
6 to children, you are not the kind of person who is  
7 dangerous to strangers like a Ted Bundy. You are  
8 dangerous to people who you establish a relationship with  
9 and are a serial domestic abuser, and these conditions  
10 simply don't relate to that at all.

11 So I think that -- is there anything else,  
12 Mr. Werner, that you wanted on there that I didn't cover  
13 one way or the other?

14 MR. WERNER: Two issues, Your Honor. We did not  
15 want the financial information -- well, condition, and I  
16 wasn't sure if the Court was going to strike that  
17 condition.

18 THE COURT: I did not impose that one, so we can  
19 strike that one.

20 MR. WERNER: What we did want, Your Honor, would  
21 be conditions eight and nine from the Probation Office's  
22 recommendation. That's the fact making the -- his  
23 compliance with SORNA a condition of supervised release,  
24 and then number nine, as we briefly discussed, I do think  
25 the Court should impose a sexual deviancy evaluation,

1 perhaps striking the physiological testing and the  
2 requirement to turn over past mental health documents.

3 THE COURT: Got it.

4 I will impose the condition that you are required  
5 under the Sex Offender Registration and Notification Act  
6 to comply with all the requirements of the Act, report  
7 your address, where you will reside, and any subsequent  
8 change of residence to Probation, register as a sex  
9 offender in any jurisdiction where you reside, are  
10 employed, or a student, and register in the jurisdiction  
11 in which you were convicted, and must -- you must  
12 register within three business days after your  
13 sentencing -- or after your release from custody, I  
14 should say, after serving this sentence. I'm not going  
15 to order the sexual deviancy evaluation, however. I  
16 don't believe that is required under the circumstances.

17 I will waive the fine for inability to pay. There is  
18 a \$100 Special Assessment, which is due immediately.

19 Then, Mr. Carroll, are you recommending now the  
20 Tucson facility instead of the Phoenix facility?

21 MR. CARROLL: Yes, that's correct.

22 THE COURT: Okay. So I'll recommend FCI Tucson.

23 And then you had an issue about return of property.  
24 I got your Motion seems like only in the last day or two.

25 Mr. Friedman, do you know anything about that?

1 MR. FRIEDMAN: I do. It was just filed  
2 yesterday. We have no objections, so we were -- I guess  
3 if we could keep a slight window open. We normally have  
4 a week to answer. I expect to file something tomorrow  
5 saying we're fine returning --

6 THE COURT: Okay. I'm not sure -- obviously,  
7 the Marshals have some, but some of it might still be  
8 back in the Dakotas with the local police. So we'll sort  
9 it out, and anything that we have in the United States'  
10 custody will be returned, and then beyond that, there's  
11 not much we can do.

12 MR. FRIEDMAN: And if I could just state that  
13 almost certainly we'll file something saying that we  
14 agree to that, but we just wanted to finish consulting.

15 THE COURT: Right. We'll wait for the  
16 government's response in that area.

17 And was there anything else from the government that  
18 I needed to address?

19 MR. WERNER: Not from our perspective, Your  
20 Honor.

21 THE COURT: And, Mr. Carroll, did I cover the  
22 things you wanted me to cover?

23 MR. CARROLL: Yes, Your Honor. I have one other  
24 thing. Mr. Doran will certainly appeal this.

25 THE COURT: Yes.

1 MR. CARROLL: And what I would ask, given his  
2 statements, as I think were made clear to the Court, one  
3 of the issues is going to be the effectiveness of his  
4 counsel. What I suggest is that the Court authorize CJA  
5 to appoint counsel for appeal. The Federal Defenders  
6 will file the Notice of Appeal, clean up the return of  
7 property issues, and then hand the case over to appellant  
8 counsel with the Court's permission.

9 THE COURT: Well, certainly, you know,  
10 Mr. Doran, you have the right to appeal the sentence I've  
11 imposed here today to the United States Court of Appeals,  
12 and if you want to appeal, you must file that notice  
13 within 14 days of today. And if you can't afford the  
14 cost of the appeal, the government will pay them for you.  
15 And if you want an attorney for the appeal and cannot  
16 afford one, the Court will appoint an attorney for you,  
17 and the Clerk will assist you in preparing papers  
18 necessary for your appeal.

19 So, Mr. Carroll, your proposal is spot on. Stay with  
20 the case until the Notice of Appeal is filed and the  
21 property matter is dealt with, and then, you know, it  
22 should be turned over to CJA counsel, and they'll take it  
23 from there.

24 MR. CARROLL: Thank you, Your Honor.

25 Your Honor, there's one other issue that I think I've

1 raised in my Sentencing Memo, is that Mr. Doran, although  
2 you're recommending Tucson, he has a telephonic custody  
3 hearing at the end of this month, and I don't know if  
4 there's a way to delay his designation or transfer to  
5 another facility until after that is done.

6 In my experience, and I think Mr. Doran understands  
7 this too, once you're in transit with the BOP, that could  
8 take a number of weeks, and the ability to make phone  
9 calls and do things like that is really restricted.

10 THE COURT: You know, I can't -- I'm not going  
11 to interfere in the Bureau of Prisons' processing. Their  
12 considerations and their needs to move people on the  
13 schedule that they determine is something that I'm simply  
14 not privy to, so I don't want to impose any new  
15 restrictions or problems for them, so I'm not going to  
16 enter into that. You can try the Bureau of Prisons on  
17 that one.

18 MR. CARROLL: And I've reviewed the Judgment.

19 THE COURT: Sure. You can hand it to Mr. Werner  
20 and, Mr. Werner, you can approach.

21 Okay. I've signed the Judgment in the case. Thank  
22 you, Counsel, for the excellent work through the years.  
23 To Mr. Carroll and Mr. Stansell and the entire Public  
24 Defender's office, you did a really fabulous job for  
25 Mr. Doran, and I appreciate the quality of your work

1 every step of the way.

2 We'll be adjourned. Thank you.

3 (End of Proceedings)

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1                                   C E R T I F I C A T E

2       STATE OF WASHINGTON)  
3                                   ) ss.  
4       County of King            )

5           I, the undersigned Notary Public in and for the  
6       State of Washington, do hereby certify:

7           That the foregoing verbatim transcript of  
8       proceedings was transcribed under my direction; that the  
9       transcript is a full, true and complete transcript of  
10      the testimony of said witness, including all questions,  
11      answers, objections, motions and exceptions;

12           That I am not a relative, employee, attorney or  
13      counsel of any party to this action or relative or  
14      employee of any such attorney or counsel, and that I am  
15      not financially interested in the said action or the  
16      outcome thereof;

17           That I am herewith securely sealing and digitally  
18      signing this transcript and delivering the same via  
19      electronic filing to the Clerk of the Court.

20           IN WITNESS WHEREOF, I have hereunto set my hand and  
21      affixed my official seal this 10th day of October, 2014.

22

23

24

25

/S/ Leslie Waltzer  
                                  Notary Public in and for the State  
                                  of Washington, residing at Issaquah